

1 extremely helpful for me to say, well, you can do it A, B,  
2 C, D. I read your letter and I didn't see any problem with  
3 any of the methods that you proposed to use.

4 So I agree with what Mr. Kleinman said as to how  
5 to do it through affidavit. There's language saying you  
6 could do it through proxy in the liability order and the HDO  
7 and then there's another thing putting in all the tens of  
8 thousands of pages of records which I think -- if you want  
9 to do it that way that's your choice.

10 So I'm not going to rule that you must do it one  
11 way or another way. I think the choice is up -- as to how  
12 to do it is up to you in consultation with your clients, but  
13 there was nothing in your letter that -- in that part of  
14 your letter that struck me as, no, don't do it that way.

15 But you -- I mean you know the risks you run by  
16 doing it one way versus another way, versus another way.  
17 You're right, you prove it by a preponderance of the  
18 evidence.

19 If you think that -- and I know that business  
20 records come in and business practices and if that's the way  
21 you want to do it I don't see any problem with it. But if  
22 you want to do it another way -- do it whichever way in your  
23 judgment would best serve your clients.

24 MR. KLEINMAN: I mean there -- and there could be  
25 other things in another location. For example --



1 JUDGE STEINBERG: Yeah.

2 MR. KLEINMAN: -- there's a notion of estoppel  
3 which you apply as others do, as well. In this instance we  
4 have got local exchange companies who charged public pay  
5 phone rates for these pay phones and it may be that they  
6 cannot now turn around and say, oh, well, we really should  
7 have charged them as semipublic, which was a different  
8 categorization.

9 JUDGE STEINBERG: Right. Oh, I don't know.

10 MR. KLEINMAN: Yeah.

11 JUDGE STEINBERG: I don't -- okay, that I don't  
12 know anything about.

13 MR. GOODMAN: There are no two rates.

14 MR. KLEINMAN: Can I finish? But whatever it is I  
15 understand that you're not going to tell us how to prove our  
16 case.

17 JUDGE STEINBERG: Yeah.

18 MR. KLEINMAN: What would your view be on whether  
19 we could bring a motion for summary adjudication on issues  
20 where we think there is no material issue with fact and  
21 under law we should be entitled --

22 JUDGE STEINBERG: Well, okay. If you -- well,  
23 there's a rule, 1.251, on summary decision.

24 MR. KLEINMAN: Right.

25 JUDGE STEINBERG: And you're certainly entitled to



1 use whatever provisions of the Commission's rules that you  
2 want to use.

3 MR. KLEINMAN: Right.

4 JUDGE STEINBERG: But I'll tell you, if there's a  
5 motion for summary decision filed -- see, summary decision  
6 motions also can be used, you lay one on them the day before  
7 the exhibit exchange date or a week before so that they're  
8 working on the summary decision motion instead of the -- you  
9 know, there's a way to use that -- I mean not that I've ever  
10 done anything like that or anybody here has ever done  
11 anything like that.

12 There's a way of eating up their time if the --  
13 I'll tell you, if the motion's filed too close to the  
14 hearing it will probably be denied because there won't be  
15 adequate time to give an adequate amount of time to give it  
16 full consideration.

17 So if you're going to do that do it early enough  
18 in the process so that I get a meaningful response and then  
19 I can issue a ruling before the hearing. But I don't have  
20 any problem with that.

21 MR. KLEINMAN: Yeah.

22 JUDGE STEINBERG: I mean if you're in a position  
23 to file a motion for summary decision or if you think you  
24 are, you probably are in a position to get a case settled  
25 with a compromise by both sides, I think if it's that clear.



1                   Now I don't think we need a response on the public  
2 pay phone rates versus semipublic because I have no idea  
3 what you're talking about.

4

5                   MR. KRAMER: Well, Your Honor --

6                   JUDGE STEINBERG: Oh, I can guess but I don't want  
7 to at this stage.

8                   MR. KRAMER: Well, Your Honor, actually there's  
9 two issues I think that flow from what Mr. Kleinman has said  
10 which are going to be critical which I think we are going to  
11 have to address, and which I hope we would address, because  
12 they will dramatically affect how these cases go forward.  
13 The first is this question of whether we can, in fact, prove  
14 up by general business practice or whether you intend to  
15 allow a line-by-line inquiry?

16                   Whether you intend to allow the kind of inquiry  
17 you just used in your example where Mr. Goodman walks to the  
18 back of the room and pulls out a telephone record at random  
19 and says, now here's the telephone record for Joe's Pizza  
20 Parlor. Are you personally familiar with the installation  
21 at Joe's Pizza Parlor? and the person on the stand is the  
22 proprietor of the business and the business had 2000 phones  
23 and he's going to say, no, because I sent out one of my  
24 installers to do it and I never saw the phone in Joe's Pizza  
25 Parlor.



1           Was he your general -- so you don't know whether  
2   or not this phone was installed so that it faced inside the  
3   mall or whether it was installed so that it faced inside the  
4   pizza parlor.

5           JUDGE STEINBERG: Well, then you take him on  
6   redirect and rehabilitate him and you get -- well, was it  
7   your business practice to face it outside and not inside?MR.  
8   KRAMER: Okay.

9           JUDGE STEINBERG: And is there any reason that you  
10   believe that your installer didn't follow the general  
11   business practice? I mean --

12          MR. KRAMER: Yeah.

13          JUDGE STEINBERG: -- I'm not going to limit his  
14   cross-examination in the manner --

15          MR. KRAMER: Right.

16          JUDGE STEINBERG: -- if he -- he can cross-examine  
17   any which way he wants. I mean this is too early in the  
18   game to start limiting people.

19          MR. KRAMER: All right. That's fine, Your Honor.

20          JUDGE STEINBERG: And I mean, you know, you have  
21   to -- Ms. Ingram said, well, you know, maybe you have 8,000  
22   of them, and I'll stop and I'll say, okay. That's enough.  
23   Maybe you'll get tired after three or four, but you can  
24   redirect and rehabilitate and I might find that there's --  
25   yeah, the guy's the owner of the company and he's -- you



1 know, these are the policies and he's not familiar with the  
2 particulars but the policy said you do this, that and the  
3 other thing and he doesn't have any reason to believe the  
4 policies are different.

5 They don't present any witnesses in rebuttal, I  
6 mean they don't have the burden. You have the burden but I  
7 might say, well, he's proven by a preponderance of the  
8 evidence that --

9 MR. KRAMER: Sure.

10 JUDGE STEINBERG: -- blah, blah, blah. But I mean  
11 -- but I'm not going to limit his ability to cross-examine.  
12 I don't think that would be fair to Mr. Goodman.

13 MR. KRAMER: There is a second and related issue,  
14 Your Honor, and that is this issue that you say you have no  
15 idea what we're talking about when we say public versus  
16 semipublic and tariff versus nontariff and that is also a  
17 critical issue here.

18 We do not believe that either the hearing  
19 designation order or the Court's opinion or anything in the  
20 Commission's liability order requires you to do a  
21 determination by location as to whether phones -- whether a  
22 phone was in a pizza parlor is determinative of whether or  
23 not it was public or semipublic. We're concerned that we're  
24 going to bog down on that issue.

25 We're also concerned, as we've indicated -- well,



1 I'll withdraw it but I won't say that I think at some point  
2 early on in the discovery process we're going to come to  
3 grips with a discovery motion that's going to raise the  
4 issue of how the hearing is to be conducted with respect to  
5 the determination of public -- whether a particular phone  
6 was public or semipublic.

7 JUDGE STEINBERG: Okay. Are you speaking in  
8 general terms about the definitions to be used?

9 MR. KRAMER: I am, Your Honor.

10 JUDGE STEINBERG: Okay. Well, paragraph -- the  
11 HDO, paragraph 23 and footnote 27 -- excuse me, footnote  
12 47 -- to me is a clear statement that the definitions that  
13 you have to use are the ones that the FCC used in its  
14 orders.

15 If you want to use any other definitions that's  
16 entirely up to you but there might be reason to rule that  
17 the definitions that you used are not the definitions that  
18 the Commission rule used and you didn't satisfy your burden  
19 because you're comparing apples and oranges, I mean if that  
20 makes any sense to you.

21 MR. KINGSLEY: Your Honor? Where were you citing,  
22 Your Honor? Excuse me.

23 JUDGE STEINBERG: The hearing designation order in  
24 paragraph 23 and footnote 47.

25 (Pause.)



1           Maybe I wrote the paragraph number wrong -- down  
2 wrong in my notes.

3           MR. KINGSLEY: Okay.

4           JUDGE STEINBERG: Is there no footnote 47?

5           MR. KINGSLEY: There is. Is that --

6           JUDGE STEINBERG: No. Look at -- look at -- okay,  
7 under "The definition established in the first  
8 reconsideration order is clarified in the liability order."  
9 That's the section I'm -- that's the portion of 47 that I'm  
10 talking about.

11          MR. KINGSLEY: Right. Right. Yeah, that's looks  
12 like --

13          JUDGE STEINBERG: Yeah, I mean --

14          MR. KINGSLEY: That's paragraph 23?

15          MR. KINGSLEY: Yeah -- yeah. It seems to say to  
16 me in paragraph 23 --

17          MR. KINGSLEY: Right.

18          JUDGE STEINBERG: -- seems to say to me, "Use  
19 these definitions."

20          MR. KINGSLEY: Well, sure.

21          JUDGE STEINBERG: Does anybody want to be heard on  
22 that?

23                (No response.)

24                Okay. Let's --

25                (Pause.)



1 Ms. Mehta, do you want to be heard on that?

2 MS. MEHTA: Well, the Bureau just wants to add  
3 that while, yes, we definitely want or would like a  
4 definition in each deal to be advised showing the location  
5 of a phone is not the only way --

6 JUDGE STEINBERG: Right.

7 MS. MEHTA: -- to demonstrate the use.

8 JUDGE STEINBERG: No, I would agree with that. If  
9 -- no, I agree within the terms of the definition you can --  
10 the general definition you can show it which way you want to  
11 show it.

12 I mean it seems to me like what we're doing is  
13 we're trying to anticipate what conclusions of law will be  
14 written by each side and it seems to me that might be the --  
15 let's see what happens and then you might want to argue this  
16 to me in conclusions of law that -- but I don't really think  
17 I want to deal with nailing.

18 Also, the HDO, and I refer to paragraph 8 and  
19 footnote 28, clearly put the burden of proceeding and the  
20 burden of proof on the Complainants and I don't have any  
21 authority nor do I want to shift it at any point in time so  
22 that -- if you put on a prima facia case of damages, the  
23 burden does not shift to the Defendants to disprove your  
24 prima facia case. You have to prove your case.

25 I mean they can rebut it if they want to but they



1 don't have to -- they don't bear the burden of proving a  
2 negative by a preponderance of the evidence. Okay, anything  
3 else that I need to talk about relating to your letter, Mr.  
4 Kramer:

5 MR. KRAMER: (Shaking head no.)

6 JUDGE STEINBERG: Okay. Let's get down to the  
7 dates. I've worked on a schedule which I think is pretty  
8 realistic and let me just give it to you and then if we need  
9 to talk about it we can talk about it.

10 August 3rd -- and all of these dates are 2001.  
11 August 3rd will be the date for completion of all discovery.  
12 I already talked about that, completion means as of that  
13 date everything ends, it doesn't mean you file your last  
14 request on August 3rd with the games playing caveat that I  
15 talked about.

16 I personally -- well, actually being the most ill-  
17 informed person about these matters in the room my naive  
18 judgment is that I don't see why after completion of  
19 discovery every single one of these cases can't be settled,  
20 maybe not for everything that you're asking for but for a  
21 realistic number and maybe for more than the Defendants are  
22 willing to pay, but again for a realistic number.

23 By that point in time everyone should know what  
24 the other side can and can't prove. I would urge you all to  
25 take a realistic view of what you can and can't prove and,



1     you know, not -- to be very realistic about what the  
2     evidence shows.

3             I've structured a two-week period ending on August  
4     17th for the parties to talk about settlement. On August  
5     17th I would like each party to file a report on their  
6     efforts to reach a settlement or settlements of the  
7     captioned complaint, at least however many are left by that  
8     point in time.

9             Just tell me what's going on. If it's possible to  
10    settle then you might get a little more time to actually  
11    structure a settlement. If it's not possible then tell me  
12    that you don't think it's possible. But after the dust is  
13    cleared and everybody's been able to take a descent look at  
14    what evidence is there and what evidence isn't there I don't  
15    see why everything shouldn't settle. Okay.

16            So that's August 17th we get the report or it  
17    could be before that date if you want. If you want to  
18    complete discovery before August 3rd that's okay, too. If  
19    you want to finish up in the middle of July so you can go  
20    away for vacation because August is out, you're not going to  
21    be able to go anywhere in August, you know, that's fine,  
22    too.

23            Now the next day I have is -- okay, let's say you  
24    can't reach a settlement I think a lot of matters can be  
25    stipulated. So on August 31st I want a report from each



1 party on their efforts to reach stipulations, yeah, we've  
2 reached a number of stipulations and we're working on others  
3 and, no, we can't reach them.

4 If you want -- if parties want to file joint  
5 reports that's okay, too, but I just -- I want everybody  
6 accounted for.

7 The next date I have is September 21st and that  
8 will be the date for the exchange of written direct case  
9 exhibits, stipulations and a list of witnesses, if any, to  
10 be called for oral testimony. I'm going to order that all  
11 or substantially all of the direct case exhibits be reduced  
12 to writing.

13 I think -- I don't see why we need a bunch of oral  
14 witnesses when you can write it -- put it in an affidavit  
15 and exchange it and then everybody can ask their questions.  
16 It saves a whole lot of time. But if you need to supplement  
17 something with oral testimony that's fine but it should be  
18 kept -- that should be kept to a minimum.

19 The August -- excuse me -- the September 21st  
20 date, that will be the date that all of the exhibits have to  
21 be received so that they have to be -- everybody has to have  
22 everybody else's on that date and however you get to them is  
23 your business, and me, too. I get a copy, too.

24 In the order setting the dates there will be a  
25 big, long footnote telling you how I want the exhibits, you



1 know. I want a, you know, a number for every exhibit with,  
2 you know, the -- somebody, you know, the party, Exhibit 1.  
3 If you want to say the party, parenthesis, the complaint  
4 number, any way that -- any way to keep it straight.

5 I want -- and this is very important to me -- I  
6 want a number on every page of every exhibit. You can start  
7 with the number -- if there's a cover sheet I don't want a  
8 number on the cover sheet. All the cover sheet says is  
9 something Exhibit 1, I don't want a -- I don't care -- then  
10 I don't want a number on it. But every page you start with  
11 number 1 and you take you're little Bates stamp and you put  
12 a number on every page so that when we refer to it we're all  
13 referring to the same thing.

14 If the exhibits come and they don't have numbers  
15 on every page you can expect to get them back and you'll  
16 have to put numbers on the pages. If there's any -- when  
17 you read that footnote I don't know if it's -- it's clear to  
18 me what I mean but if it's not clear as to how I want things  
19 done then you can give me a call and I'll tell you. Does  
20 anybody object to anybody calling me directly if there's a  
21 procedural question that they have?

22 MR. JACKSON: I don't object, Your Honor.

23 JUDGE STEINBERG: Okay. I mean assuming that  
24 nobody will talk about substantive matters? I mean it's  
25 just easier that way. Okay. I don't hear any objections,



1     so if you want to call me about something purely procedural,  
2     you know, you're free to do so.

3             If there's like an exhibit that -- if you have a  
4     choice between putting 10,000 pages in the record or a five  
5     page summary, I want the five page summary with the 10,000  
6     pages in the courtroom in case anybody wants to see it. I  
7     can, there's a lot of compilations and summaries and stuff  
8     like that, I think.

9             MR. JACKSON: Right.

10            JUDGE STEINBERG: So we'll do it that way rather  
11     than have the 10,000 pages.

12            Okay. Now the next date is October 1st and we'll  
13     have an admissions session and also with the admissions  
14     session, if somebody wants we'll -- everybody knows what  
15     goes on in an admissions session?

16            (No response.)

17            Okay. Essentially, we go party by party and you  
18     identify the exhibit and -- well, you're going to settle  
19     anyway so what do you care?

20            MR. JACKSON: Well, I want --

21            JUDGE STEINBERG: Yeah, but you want to know?

22     Okay.

23            MR. JACKSON: Correct.

24            JUDGE STEINBERG: Okay.

25            (Laughter.)



1           We go exhibit by exhibit and the exhibit's  
2 identified and it's moved into evidence and the objections  
3 to it are taken and ruled on or the ruling is reserved and  
4 the exhibit is received or rejected or partially received  
5 and that saves a lot of time.

6           At that point in time we say, look, John Doe is  
7 the sponsor of this exhibit. Does anybody want John Doe to  
8 come to the hearing? Does anybody want to cross-examine  
9 John Doe? If nobody wants to cross-examine John Doe then  
10 John Doe can stay home.

11           If somebody wants to cross-examine John Doe then  
12 John Doe has to come and then we jump right to, look, this  
13 is Exhibit 1. Is that your signature on the last page?  
14 Yeah. Okay, he's available for cross, anything you want to  
15 supp? Well, there's a typo or something like this. That's  
16 -- so that will be on October 1st at 9:00 a.m. probably  
17 here, except John Doe will be over there.

18           October 15th will be the date for the commencing  
19 of the hearing at 9:00 a.m. I know there's stuff going on  
20 in the court of appeals and that the Commission's brief is  
21 due today and I think so there's probably going to be an  
22 oral argument in the Court of Appeals this Fall. As soon as  
23 somebody knows the date could somebody --

24           MR. KRAMER: September 6th, I think it's September  
25 6th.



1 JUDGE STEINBERG: Oh, okay. So it won't impact --  
2 they've already set the date?

3 MR. JACKSON: Yes.

4 JUDGE STEINBERG: Oh, okay.

5 MS. INGRAM: Mm-hmm.

6 JUDGE STEINBERG: So it won't impact on our dates  
7 I don't think, will it?

8 MS. INGRAM: No.

9 JUDGE STEINBERG: Because I was going to say,  
10 well, if it --

11 MS. INGRAM: Not unless they have their clerks  
12 working around the clock.

13 JUDGE STEINBERG: Okay.

14 (Laughter.)

15 But if something -- okay, that's -- frankly, in my  
16 mind that's more important than this.

17 MS. INGRAM: Exactly.

18 JUDGE STEINBERG: And if there's consensus that  
19 you guys have to put up this for the sake of that let me  
20 know and reach agreement as to a new schedule and let me  
21 know. If it's reasonable, you know, I mean because I  
22 would -- I would place my emphasis on that rather than this.  
23 I mean that will be after discovery, anyway, it's well after  
24 discovery.

25 Yes, sir?



1 MR. JACKSON: Your Honor, on the October -- the  
2 September 21st date exchange of direct cases, that would be  
3 the date that the Complainant files his case in chief?

4 JUDGE STEINBERG: You can do a direct case if you  
5 want. I don't know why you would.

6 MR. JACKSON: Well, that kind of gets to my real  
7 question.

8 JUDGE STEINBERG: Yeah.

9 MR. JACKSON: There's no provision in the schedule  
10 for us to submit rebuttal cases.

11 JUDGE STEINBERG: I haven't gotten to that yet.

12 MR. JACKSON: Pardon?

13 JUDGE STEINBERG: I haven't gotten to that yet.

14 MR. JACKSON: Okay. Thank you.

15 MR. KRAMER: You've got to do the hearing.

16 JUDGE STEINBERG: Pardon -- pardon me?

17 MR. KRAMER: I mean -- never mind.

18 JUDGE STEINBERG: My usual footnote at the end of  
19 commencement of the hearing, blah, blah, blah is rebuttal,  
20 if any, will commence immediately after the conclusion of  
21 the direct cases so that you should be ready to go -- well,  
22 we're going to do all the direct cases first. We're not  
23 going to do one case and then rebuttal, another case and  
24 then rebuttal, unless you want to do it that way.

25 MR. JACKSON: Well --



1 JUDGE STEINBERG: My inclination is to do all the  
2 direct cases and then all the rebuttal cases.

3 MR. JACKSON: I have just one comment on that.

4 JUDGE STEINBERG: Yes, sir?

5 MR. JACKSON: That may well ultimately be the best  
6 way to do it, the way Your Honor has just described it, but  
7 we do -- and this is not an issue that we have to resolve --

8 JUDGE STEINBERG: Right.

9 MR. JACKSON: -- today, but it's something we need  
10 to all be thinking about for the future because we will have  
11 to discuss it.

12 This case has been designated as kind of the cast  
13 of thousands case where we have multiple Complainants and  
14 multiple Defendants and it does seem that at some point in  
15 time when we start actually focusing on the actual hearing  
16 that it might be beneficial to have certain days for  
17 witnesses for certain companies to --

18 JUDGE STEINBERG: That's fine. You can all agree  
19 to that.

20 MR. JACKSON: Because I just don't want to have,  
21 for example --

22 JUDGE STEINBERG: Yeah, I know.

23 MR. JACKSON: -- SPRINT people hanging around for  
24 three weeks here in the courtroom waiting to testify --

25 JUDGE STEINBERG: No, I know. No, that's fine and



1     that -- I don't see why you can't reach agreement on that I  
2     mean because it's to everybody's benefit to come up with a  
3     schedule. You know, what I don't want is I don't want one  
4     witness at 9:00 and then the next witness three days from  
5     now at 9:00. I want to keep things moving to the extent  
6     possible.

7                 Now on the rebuttal cases I expect rebuttal cases  
8     to follow -- I mean if the direct cases are over let's say  
9     on a Wednesday morning I think we can start rebuttal  
10    Thursday morning and just go straight through.

11                I would like on rebuttal to direct that your  
12    rebuttal cases be reduced to writing, to have all of the --  
13    substantially all of the rebuttal cases reduced to writing,  
14    but I realize that given the timing of it you might not be  
15    able to be as thorough in reducing your stuff to writing as  
16    the people who exchanged on September 21st are, so you'll  
17    get a little more leeway through oral testimony.

18                Now the order of presentation, absent an agreement  
19    by the parties to the contrary --

20                MR. KRAMER: Your Honor?

21                JUDGE STEINBERG: Yes, sir?

22                MR. KRAMER: Before you turn the page to the next  
23    part, I don't understand the timing. If there's going to be  
24    --

25                JUDGE STEINBERG: Oh.



1 MR. KRAMER: -- rebuttal cases which is prefiled  
2 direct.

3 JUDGE STEINBERG: Oh. You're right. You're  
4 absolutely right.

5 MR. KRAMER: I'm sorry.

6 JUDGE STEINBERG: No, you're right. I hadn't  
7 thought of that. I should have a date for the exchange. I  
8 guess we should have -- well, I don't know -- you know what  
9 we'll do? I think what we'll do is, how -- well, you won't  
10 know how long it will take you to put together a rebuttal  
11 until after -- well --

12 MR. JACKSON: I would say -- I can remember those  
13 cellular comparative cases, and I'm sure you can, too. They  
14 were kind of --

15 JUDGE STEINBERG: I tried three of them.

16 MR. JACKSON: I know you did.

17 JUDGE STEINBERG: I mean it came out for your  
18 side.

19 MR. JACKSON: I know you did.

20 JUDGE STEINBERG: You do? You remember?

21 MR. JACKSON: Oh, I'm not that old.

22 (Laughter.)

23 My mind hasn't gone quite that far yet, but it  
24 would seem to me that just as a ballpark estimate to throw  
25 it out there you ought to be able to get the rebuttal case



1 submitted within 14 calendar days of the date of the direct  
2 case submission.

3 JUDGE STEINBERG: You know what we'll do? I will  
4 write -- I will do a footnote about rebuttal. Nobody knows  
5 here how long the hearing's going to go. Hopefully, it  
6 won't go, but nobody really knows right to the end of the  
7 hearing and then see if there are rebuttal cases and then  
8 set a separate schedule for that. Does anybody --

9 MR. JACKSON: That's fine.

10 JUDGE STEINBERG: -- have any problem with that?

11 MR. KRAMER: Well, it would seem to me to make  
12 more sense to -- if I'm hearing Mr. Brown's suggestion  
13 correctly -- I'm sorry, Mr. Jackson.

14 MR. JACKSON: That's all right.

15 MR. KRAMER: If I'm hearing Mr. Jackson's  
16 suggestion correctly, to set a date and if we have the  
17 direct -- the direct cases on the 21st and then have the  
18 rebuttal cases, such as they are, the written cases -- the  
19 written direct rebuttal cases a couple of weeks later and  
20 then have you admissions session after that and your hearing  
21 after that.

22 But I think we ought to try to get as much in  
23 writing as we can beforehand or it's going to turn into a  
24 real mess. I don't think -- it's going to turn into a real  
25 mess.



1 I don't think it's going to make sense to say,  
2 "Well, we'll conclude the live hearing on October 20th and  
3 then we'll give two weeks for written direct for the  
4 rebuttal and reconvene the hearing." I mean that -- that  
5 will just be incredibly cumbersome.

6 JUDGE STEINBERG: Okay. Once you get the written  
7 direct cases, assuming there's very, very little oral  
8 testimony, although there might be a lot of oral testimony  
9 on cross-examination.

10 MR. KRAMER: Well, if you're going to have them  
11 asking about every pay phone there --

12 JUDGE STEINBERG: Well, they can if they want to.

13 MR. KRAMER: Yeah.

14 JUDGE STEINBERG: I might get tired of hearing it  
15 and I'm not going to be shy about saying it but I mean I  
16 don't see that it's -- I'm not going to preclude them from  
17 trying their case the way they see fit and I'm not going  
18 to -- I'm not going to do that to you, either.

19 MR. JACKSON: Well, Your Honor, let me -- let me  
20 just backtrack for a second. It may well be that it's more  
21 appropriate to submit rebuttal presentations after the oral  
22 testimony on the direct cases after the cross-examination  
23 but it really I think will depend.

24 The real advantage to submitting a rebuttal case  
25 prior to the hearing in mid-October would be if they're



1 going to use some kind of a proxy model to set forth their  
2 damage claim because then you would want that model  
3 evaluated by expert witnesses who would be able to set forth  
4 opinions as to whether it's valid or not.

5 JUDGE STEINBERG: I'm going to --

6 MR. JACKSON: If you're not going to do that then  
7 it doesn't really matter.

8 JUDGE STEINBERG: Well, I'm going to stick with my  
9 original concept of we'll talk about rebuttal when the  
10 hearing's over.

11 MR. JACKSON: Okay.

12 JUDGE STEINBERG: I think -- and if we have to  
13 come back after a period of time around Thanksgiving and  
14 Christmas then we'll do that because this is not -- I  
15 don't -- this is not your typical FCC case where you can  
16 anticipate generally how long something's going to take. I  
17 mean I have no earthly idea of what I'm going to get and how  
18 long it's going to take.

19 Now oral presentation, absent an agreement among  
20 the parties to the contrary, then I'm going -- the cases  
21 is -- the direct cases will go in the order of file number  
22 so that whatever file number is left -- whatever file number  
23 is left -- is the first one goes first, the second one goes  
24 second, the third one goes third.

25 Now if you want to agree that -- if everybody



1 wants to agree that Mr. Kramer goes first with all of his  
2 clients, then Mr. Thompson goes with all of his clients and  
3 somebody else goes -- that's fine with me. Just please let  
4 me know in advance what the agreement is so that I can  
5 prepare.

6 MR. JACKSON: I guess --

7 JUDGE STEINBERG: But I'm saying, if you can't  
8 agree then this is -- this is how it will go.

9 MR. KRAMER: I'm sorry, Your Honor --

10 MR. THOMPSON: Your Honor?

11 MR. KRAMER: I'm sorry.

12 JUDGE STEINBERG: Okay.

13 Mr. Thompson?

14 MR. THOMPSON: Oh, I just wanted to ask is it fair  
15 to infer consistent with the Plaintiff's right to open and  
16 close that if the Defendants present rebuttal testimony we  
17 have the opportunity then to bring in rebuttal witnesses to  
18 their cases?

19 JUDGE STEINBERG: That's surrebuttal.

20 MR. THOMPSON: All right.

21 JUDGE STEINBERG: I don't like surrebuttal. You  
22 get one shot -- you get one shot, they get one shot, we go  
23 home.

24 MR. THOMPSON: Okay.

25 JUDGE STEINBERG: I mean are you talking about



1 opening statements?

2 MR. THOMPSON: No, no, no. Just the Complainants,  
3 you know, in any kind of trial have a right to open and  
4 close and you have the right to refute whatever evidence the  
5 Defendant puts on to challenge your case.

6 JUDGE STEINBERG: Let me -- well, okay, let me  
7 just do that. Let me say I'm disinclined to do it but if  
8 it's going to be one guy for 30 minutes, fine.

9 MR. THOMPSON: I wouldn't anticipate --

10 JUDGE STEINBERG: Well, it's more like it may be  
11 fine. I might say, no. I've heard enough. I don't need to  
12 hear any more, but I don't routinely -- we call that  
13 surrebuttal and I don't routinely -- I don't think anybody  
14 here routinely does it. Well, anyway, there are only two  
15 people left. I don't think anybody here --

16 MR. THOMPSON: All right. Thank you.

17 JUDGE STEINBERG: -- does that.

18 MR. KRAMER: Your Honor, in light of -- in no  
19 surrebuttal and I would just urge you, please, to rethink  
20 whether it doesn't make sense to have written rebuttal  
21 direct submitted a couple of weeks after the written direct  
22 is put on by the complainants. It will just speak --

23 JUDGE STEINBERG: You want to roll -- you want to  
24 roll that into your direct. You want to see what their  
25 cases are and then modify --



1 MR. KRAMER: And it will also -- and it will also  
2 help -- it would help a whole lot of things including  
3 settlement discussions and --

4 JUDGE STEINBERG: Well --

5 MR. KRAMER: -- it will help a whole lot of  
6 things.

7 JUDGE STEINBERG: Well, I hear -- I hear a lot of  
8 talk about settlement and --

9 MR. KRAMER: Your Honor, I think it is --

10 JUDGE STEINBERG: -- and no settlement.

11 MR. THOMPSON: I'm sorry. If I may? In Court  
12 proceedings, many Court proceedings anyway, when -- under  
13 the Federal Rules of Civil Procedure we would at least have  
14 witness lists and exhibit lists prior to putting on our  
15 cases under --

16 JUDGE STEINBERG: Well --

17 MR. THOMPSON: -- many administrative agencies we  
18 would actually have their entire case in writing --

19 JUDGE STEINBERG: Well, and that's --

20 MR. THOMPSON: -- before we even start.

21 JUDGE STEINBERG: Well, I would -- to a certain  
22 extent I would agree that in some types of cases at the FCC  
23 that's -- usually everybody exchanges their exhibits on the  
24 same day, but this -- but that's a different type of case.  
25 Like in some comparative rule cases you would have



1 -- which I guess we don't have any more -- you would have a  
2 date for written direct case exhibits and a date for  
3 rebuttal exhibits, but that's the type of case where you get  
4 very -- they're direct cases and then -- and you get very  
5 little cross-examination. I don't think it's fair to bind  
6 the defendants.

7 If they exchange their exhibits, if they give you  
8 let's say on October their rebuttal exhibits and there's  
9 extensive cross-examination then they're going to have to  
10 have an opportunity to revise their rebuttal exhibits to  
11 account for their cross-examination and it's -- it would be  
12 a waste of their time. So I'm going to stick with my  
13 ruling.

14 MR. KLEINMAN: Judge, with all due respect,  
15 Section 1.255(a) --

16 JUDGE STEINBERG: Okay.

17 MR. KLEINMAN: -- states that hearings on a formal  
18 complaint -- I'm paraphrasing -- the Complainant has the --  
19 shall, unless the Commission orders otherwise, open and  
20 close. I think that's what Mr. Thompson's referring to.

21 JUDGE STEINBERG: Okay. I don't know what that  
22 means, I've never used it and I've never seen it, but that's  
23 -- if that's what it says --

24 MR. KLEINMAN: I'd suggest just this morning that  
25 it may be where to foreclose exactly how that has to or



1     should in the -- it may be too early this morning to  
2     foreclose exactly how that needs to be accommodated.

3             JUDGE STEINBERG:   Okay.  Let's see --

4             MR. THOMPSON:   Having an opportunity to ask you to  
5     put on surrebuttal I think is fine.

6             JUDGE STEINBERG:   Well, that's -- no, let's --  
7     let's take it up -- you might not want to put one on.

8             MR. THOMPSON:   That's right.

9             JUDGE STEINBERG:   I don't know.

10            MR. THOMPSON:   That's correct, too.

11            JUDGE STEINBERG:   You might -- if it's very, very  
12     brief then I don't see that there's a problem, but I don't  
13     -- I'm not going to sit here and do two weeks.

14            MR. THOMPSON:   That's right.  If it would be  
15     appropriate now, Your Honor, I would like to state for the  
16     record this objection to your ruling not having the  
17     Defendants submit their materials in advance of --

18            JUDGE STEINBERG:   Oh, you don't -- any -- you  
19     don't have to -- you don't have to formally --

20            MR. THOMPSON:   Okay.

21            JUDGE STEINBERG:   -- you don't have to formally --  
22     you don't have to keep -- yeah, put it on your list.

23            MR. THOMPSON:   Okay.

24            (Laughter.)

25            JUDGE STEINBERG:   So that's what?  I'm even one --



1 (Multiple voices.)

2 Okay. It's like a hockey game.

3 MR. JACKSON: We have perfect balance, Your Honor.

4 MS. MEHTA: Yeah.

5 JUDGE STEINBERG: For the moment. Okay.

6 MR. JACKSON: It may be, Your Honor, that  
7 discovery will tell us enough about their views as it will  
8 obviously tell them about ours. Then what we do we can  
9 worry about later, but I just think it may be a little too  
10 early to foreclose --

11 JUDGE STEINBERG: Or --

12 MR. JACKSON: -- having a written direct case from  
13 them before we start.

14 JUDGE STEINBERG: -- or, you know, what we might  
15 also -- maybe after discovery, maybe sometime in August,  
16 early August, have another conference and talk about this  
17 again because we're really -- we're really speaking  
18 hypothetically now and we don't -- we don't have a practical  
19 feel for the -- for what's involved. So I might schedule  
20 one on my own motion and you might ask me to schedule one.

21 There's one final thing we have to -- that we  
22 should think about is who's going to be allowed to cross-  
23 examine which witnesses? You have a complaint and the  
24 complaint is A versus B. So, obviously, A puts the witness  
25 up and B can cross-examine. Then you have Party Z down



1 here.

2 Well, the Bureau can do anything they want. They  
3 can do -- they can do anything they want, they can do  
4 nothing, it's up to them. But then you have Party Z, does  
5 Party Z get to cross-examine Party A's witnesses? What  
6 interest does Party Z have in cross-examining A's witnesses?  
7 Because Z is not a party -- it's not a -- it's not a  
8 Complainant and its not a Defendant in that file number.

9 However, this is a consolidated proceeding so all  
10 parties are equal. That's something that -- anybody want to  
11 comment on that?

12 (No response.)

13 My inclination is to say, A, B, it's between them,  
14 leave them alone. That's my inclination. Why would you  
15 want to sharpshoot at A when A can come back and sharpshoot  
16 at you and you make an enemy? That's my inclination.

17 My other inclination is I don't want to have 10  
18 people cross-examining the same witness. So we would have B  
19 would cross-examine A's witnesses and then one other  
20 individual among everybody would be -- A would be the  
21 primary cross-examiner and then there would be somebody else  
22 who would be a secondary cross-examiner and then that would  
23 be it.

24 Everybody would feed their questions through the  
25 secondary cross-examiner and that would be a matter for the



1 parties to decide. Well, you know, the primary absolutely  
2 has the right because they're the Defendant and then  
3 everybody else may be other than the Defendant or other than  
4 the Complainant could get together and decide who's going to  
5 be the secondary, but my preference is that it's between A  
6 and B and we leave it alone. You might want to think about  
7 that and we can maybe talk about that later unless you want  
8 to -- unless you want to make some point or comment now.

9 (No response.)

10 Okay. Anything else we have to talk about?

11 MR. KLEINMAN: I was curious whether the  
12 Commission staff has any intention to present a case,  
13 represent witnesses?

14 MS. MEHTA: We do not intend to present a case at  
15 this point, but we may participate on the cross-examination  
16 of the --

17 JUDGE STEINBERG: Yeah. The Bureau -- they -- you  
18 know, when I say the primary and the secondary and then the  
19 Bureau if they want to.

20 MR. KLEINMAN: I would just -- I would just ask  
21 that if the Bureau's intentions in terms of presenting a  
22 case more witnesses -- changes we would all want to know as  
23 soon as that happens.

24 JUDGE STEINBERG: Sure.

25 MR. KLEINMAN: I think I speak for all the other



1 people in the room.

2 MS. MEHTA: That's fine. We'll do so.

3 JUDGE STEINBERG: Okay. Anything else we need to  
4 do?

5 (No response.)

6 Okay, then. Yes, sir, Mr. Brown?

7 MR. BROWN: We finally got --

8 JUDGE STEINBERG: Okay. You have to scooch up to  
9 the microphone.

10 MR. BROWN: I'm sorry. William Brown,  
11 Southwestern Bell. We got a copy of Mr. Kramer's letter.  
12 It was directed to the wrong persons at our company. We  
13 appreciate, since we've made notices of appearances, that  
14 they use that for service so that there's no delay --

15 JUDGE STEINBERG: Okay.

16 MR. BROWN: -- in getting material because delay  
17 seems to be -- could be critical.

18 JUDGE STEINBERG: Okay.

19 MR. BROWN: We have a short time period.

20 JUDGE STEINBERG: It wouldn't hurt if everybody  
21 stuck around and just exchanged cards or something so that -  
22 - and fixed their service lists so that everybody --  
23 everybody's got everybody's correct addresses and names.

24 MR. BRUGGEMAN: Are you going to be issuing an  
25 order --



1 JUDGE STEINBERG: Yeah. I will issue --

2 MR. BRUGGEMAN: -- memorializing this with a  
3 service list attached?

4 JUDGE STEINBERG: No.

5 MR. BRUGGEMAN: Okay.

6 JUDGE STEINBERG: No. I don't -- but I will -- in  
7 the order I will -- I will dismiss those guys -- dismiss --  
8 terminate the party status of these people and I forget  
9 whatever else I did. I don't -- you can't expect me to  
10 remember what I did two hours ago.

11 MS. MEHTA: Your Honor? Your Honor, actually the  
12 Bureau would like to request that the parties get together  
13 and issue a joint service list that has everyone's current  
14 information.

15 JUDGE STEINBERG: Well, maybe -- maybe somebody  
16 could put it together, circulate it and then make it --  
17 would you be willing to do it?

18 MS. MEHTA: Well --

19 JUDGE STEINBERG: No? Not -- you've got enough to  
20 do, right?

21 MS. MEHTA: Yes.

22 JUDGE STEINBERG: Does anybody not have enough to  
23 do?

24 (No response.)

25 Well, I can do it. Let the record reflect the



1 humor --

2 (Laughter.)

3 -- in case anybody's reading this on the 8th  
4 floor.

5 (Laughter.)

6 But, yes, if somebody wants to volunteer to do it  
7 and then circulate it, fax it around and everybody can say,  
8 yeah, this is correct, and then we'll have one less. Then  
9 you can eliminate the people that I -- if you want to wait  
10 for my order to come out so you can see which file numbers  
11 are still in, you know -- whatever you want to do is okay  
12 with me. Okay. Nothing further?

13 (No response.)

14 Then we'll stand in recess. If anybody needs  
15 another conference let me know and we'll schedule one when  
16 the time comes and then I'm sure I'll see you some time and  
17 hear from you sometime. Thank you.

18 ALL: Thank you, Your Honor.

19 JUDGE STEINBERG: Thank you.

20 (Whereupon, at 11:07 a.m., the hearing in the  
21 above-entitled matter was adjourned.)

22 //

23 //

24 //

25 //



**REPORTER'S CERTIFICATE**

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HEARING DATE: May 24, 2001  
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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